

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

IN RE PHARMACEUTICAL)	MDL No. 146
INDUSTRY AVERAGE)	
WHOLESALE PRICE LITIGATION)	
)	CIVIL ACTION: 01-CV-12257 PBS
)	
THIS DOCUMENT RELATES TO)	Judge Patti B. Saris
ALL CLASS ACTIONS)	
)	Chief Magistrate Judge
)	Marianne B. Bowler

**CLASS PLAINTIFFS' NOTICE OF SUPPLEMENTAL AUTHORITY IN SUPPORT OF
THEIR OPPOSITION TO B. BRAUN MEDICAL, INC.'S MOTION TO DISMISS THE
SECOND AMENDED MASTER CONSOLIDATED CLASS ACTION COMPLAINT**

TO: ALL PARTIES AND THEIR COUNSEL OF RECORD VIA VERILAW

PLEASE TAKE NOTICE that on June 17, 2005, plaintiffs caused to be filed with the Clerk of the District of Massachusetts a copy of the Seventh Circuit Court of Appeals' recent decision in *Knudsen v. Liberty Mutual Ins. Co.*, No. 05-8010, 2005 U.S. App. LEXIS 10440 (7th Cir. June 7, 2005) (attached as Exhibit A), to be submitted in support of their Opposition to B. Braun Medical's ("BBM's") motion to dismiss the second amended master consolidated class action complaint.

In *Knudsen*, the Seventh Circuit rejected the defendant's argument that a "substantial change" to the litigation such as the plaintiff's amendment to its class definition commenced a new case pursuant to which the defendant could invoke a federal court's jurisdiction under the Class Action Fairness Act ("CAFA"). However, while the Court agreed with the Tenth Circuit's decision in *Pritchett v. Office Depot, Inc.*, 404 F.3d 1232 (10th Cir. Apr. 11, 2005) (cited by BBM in support of its motion to dismiss), which held that the filing of a notice of removal did not commence a new case under CAFA, the Seventh Circuit did not agree that the Court's

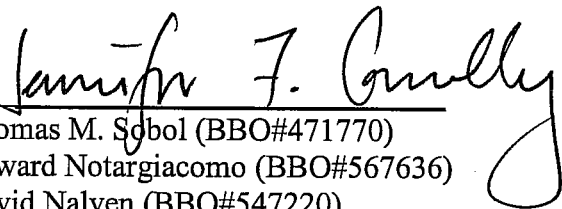
analysis in *Pritchett* would apply here, where plaintiffs have alleged claims against a new defendant. Specifically, the Court held that:

[A] new claim for relief (a new 'cause of action' in state practice), ***the addition of a new defendant***, or any other step sufficiently distinct that the district courts would treat it as independent for limitations purposes, could well commence a new piece of litigation for federal purposes even if it bears an old docket number for state purposes. Removal practice recognizes this point: an amendment to the pleadings that adds a claim under federal law (where only state claims had been framed before), or adds a new defendant, opens a new window of removal. [Internal citations omitted]. We imagine, though we need not hold, that a similar approach will apply under the 2005 Act, perhaps modeled on *Fed. R. Civ. P. 15(c)*, which specifies when a claim relates back to the original complaint (and hence is treated as part of the original suit) and when it is sufficiently independent of the original contentions that it must be treated as fresh litigation.

Id. at **4-5 (citations omitted). *See also id.* at *6 ("If in the future Liberty Mutual Fire Insurance Company should be added as a defendant, it could enjoy a right to remove under the 2005 Act, for suit *against it* would have been commenced after February 18, 2005.") (emphasis in original).

Therefore, under the language of *Knudsen*, CAFA would apply to the SAMCC claims against BBM because the AMCC alleged claims against B. Braun of America, Inc., not BBM.

DATED: June 17, 2005

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CERTIFICATE OF SERVICE

I hereby certify that I, Jennifer Fountain Connolly, an attorney, caused a true and correct copy of the foregoing, **NOTICE OF SUPPLEMENTAL AUTHORITY IN SUPPORT OF CLASS PLAINTIFFS' OPPOSITION TO B. BRAUN MEDICAL, INC.'S MOTION TO DISMISS THE SECOND AMENDED MASTER CONSOLIDATED CLASS ACTION COMPLAINT** to be delivered to all counsel of record by electronic service pursuant to Paragraph 11 of the Case Management Order No. 2, by sending on June 17, 2005, a copy to Verilaw Technologies for Posting and notification to all parties.

By 
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